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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
8

9 Cary VanDerMeulen,
10 Plaintiff,

11 v.

12 Charles L. Ryan, et al.,
13 Defendants.
14

No. CV 17-03828-PHX-JAT (DMF)

ORDER

15 Plaintiff Cary VanDerMeulen, who is not in custody, has filed a pro se civil rights
16 Complaint pursuant to 42 U.S.C. § 1983 (Doc. 1) and an Application to Proceed In
17 Forma Pauperis (Doc. 2). The Court will dismiss the Complaint with leave to amend.

18 **I. Application to Proceed In Forma Pauperis and Filing Fee**

19 Plaintiff's Application to Proceed In Forma Pauperis indicates that he is unable to
20 pay the costs of these proceedings. Accordingly, Plaintiff's Application to Proceed will
21 be granted, and Plaintiff will not be required to pay the filing fees associated with this
22 action.

23 **II. Statutory Screening of Prisoner Complaints**

24 Pursuant to 28 U.S.C. § 1915(e)(2), in a case in which a plaintiff has been granted
25 *in forma pauperis status*, the Court

26 shall dismiss the case at any time if the court determines that—(A) the
27 allegation of poverty is untrue; or (B) the action or appeal—(i) is frivolous or
28 malicious; (ii) fails to state a claim on which relief may be granted; or
(iii) seeks monetary relief against a defendant who is immune from such
relief.

1 28 U.S.C. § 1915(e)(2).

2 A pleading must contain a “short and plain statement of the claim *showing* that the
3 pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2) (emphasis added). While Rule 8
4 does not demand detailed factual allegations, “it demands more than an unadorned, the-
5 defendant-unlawfully-harmed-me accusation.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678
6 (2009). “Threadbare recitals of the elements of a cause of action, supported by mere
7 conclusory statements, do not suffice.” *Id.*

8 “[A] complaint must contain sufficient factual matter, accepted as true, to ‘state a
9 claim to relief that is plausible on its face.’” *Id.* (quoting *Bell Atlantic Corp. v. Twombly*,
10 550 U.S. 544, 570 (2007)). A claim is plausible “when the plaintiff pleads factual
11 content that allows the court to draw the reasonable inference that the defendant is liable
12 for the misconduct alleged.” *Id.* “Determining whether a complaint states a plausible
13 claim for relief [is] . . . a context-specific task that requires the reviewing court to draw
14 on its judicial experience and common sense.” *Id.* at 679. Thus, although a plaintiff’s
15 specific factual allegations may be consistent with a constitutional claim, a court must
16 assess whether there are other “more likely explanations” for a defendant’s conduct. *Id.*
17 at 681.

18 But as the United States Court of Appeals for the Ninth Circuit has instructed,
19 courts must “continue to construe *pro se* filings liberally.” *Hebbe v. Pliler*, 627 F.3d 338,
20 342 (9th Cir. 2010). A “complaint [filed by a pro se prisoner] ‘must be held to less
21 stringent standards than formal pleadings drafted by lawyers.’” *Id.* (quoting *Erickson v.*
22 *Pardus*, 551 U.S. 89, 94 (2007) (per curiam)).

23 If the Court determines that a pleading could be cured by the allegation of other
24 facts, a pro se litigant is entitled to an opportunity to amend a complaint before dismissal
25 of the action. *See Lopez v. Smith*, 203 F.3d 1122, 1127-29 (9th Cir. 2000) (en banc).
26 Plaintiff’s Complaint will be dismissed for failure to state a claim, but because it may
27 possibly be amended to state a claim, the Court will dismiss it with leave to amend.

28

III. Complaint

In his Complaint, Plaintiff names as Defendants: Arizona Department of Corrections (ADC) Director Charles L. Ryan; Facility Health Administrator Deborah Kinder; Arizona State Prison Complex (ASPC)-Douglas Head Chaplain Herman; ADC Captain Paul Martell; ADC Coordinator of Food Services Alex Ruiz; ASPC-Douglas Warden Meegan Muse; and Corizon Health Services (Corizon). Plaintiff names all Defendants in both their individual and official capacities.¹ Plaintiff seeks monetary relief and punitive damages.

It is not clear to the Court what particular claims Plaintiff is attempting to assert. In the “Case against DOC” section of his Complaint, Plaintiff refers to “denial of basic necessities,” a “health issue,” “exercise of religious freedom,” “retaliation,” “improper medical treatment,” “dietary needs ... [and] prima facie evidence of improper care,” “denial of access to the courts,” and “denied published property (book) of a religious nature.” Plaintiff also appears to assert claims based on the recent settlement in *Parsons v. Ryan*, 2:12-CV-12-00601-PHX-DKD (D.Ariz. 2012). However, none of these bases contain any factual information, nor are they directed at any particular Defendant. Rather, Plaintiff provides a separate 22-page “Narrative” that describes, seemingly, his entire period of incarceration and that, while occasionally referencing the named

¹ A suit against a defendant in his or her *individual* capacity seeks to impose personal liability upon the official. *Kentucky v. Graham*, 473 U.S. 159, 165-66 (1985). For a person to be liable in his or her individual capacity, “[a] plaintiff must allege facts, not simply conclusions, that show that the individual was personally involved in the deprivation of his civil rights.” *Barren v. Harrington*, 152 F.3d 1193, 1194 (9th Cir. 1998). By comparison, a suit against a defendant in his or her *official* capacity represents only another way of pleading an action against the entity that employs the defendant. *Kentucky*, 473 U.S. at 165. That is, the real party in interest is not the named defendant, but the entity that employs the defendant. *Id.* To bring a claim against an individual in his official capacity, a plaintiff must show that the constitutional deprivation resulted from the entity’s policy, custom, or practice. *Id.*; *Monell v. Dep’t of Soc. Servs. of New York*, 436 U.S. 658, 694 (1978).

Although Plaintiff has named the defendants in both their individual and official capacities, Plaintiff’s allegations fail to plausibly show that any policy, practice, or custom of any entity has resulted in his alleged injuries. Accordingly, the Court will construe Plaintiff’s claims as directed against the Defendants in their *individual* capacities only, and evaluate them accordingly.

1 Defendants (as well as numerous other unnamed individuals and entities), does not direct
2 any particular claims at any particular Defendants.

3 **IV. Failure to Comply With Federal Pleading Requirements**

4 As an initial matter, Plaintiff may not enforce the settlement or decrees entered in
5 *Parsons* in a separate civil rights action. See *Cagle v. Sutherland*, 334 F.3d 980, 986
6 (11th Cir. 2003); *Klein v. Zavaras*, 80 F.3d 432, 435 (10th Cir. 1996); *DeGidio v. Pung*,
7 920 F.2d 525, 534 (8th Cir.1990); *Green v. McKaskle*, 788 F.2d 1116, 1122-23 (5th Cir.
8 1986). Standing alone, remedial orders and settlement terms, such as those entered in
9 *Parsons*, cannot serve as a substantive basis for a § 1983 claim for damages because they
10 do not create “rights, privileges, or immunities secured by the Constitution and laws.”
11 *Green*, 788 F.3d at 1123-24. Rather, settlements and remedial decrees are the means by
12 which unconstitutional conditions are corrected. *Id.* at 1123. For these reasons, Plaintiff
13 may not properly seek § 1983 relief to enforce *Parsons* in this action and he fails to state
14 a claim to the extent that he seeks relief pursuant to *Parsons*.

15 Additionally, Rule 8(a) of the Federal Rules of Civil Procedure requires a “short
16 and plain statement of the claim.” Fed. R. Civ. P. 8(a)(2). Rule 8(d)(1) states that
17 “[e]ach allegation must be simple, concise, and direct.” A complaint having the factual
18 elements of a cause of action scattered throughout the complaint and not organized into a
19 “short and plain statement of the claim” may be dismissed for failure to satisfy Rule 8(a).
20 See *Sparling v. Hoffman Constr. Co.*, 864 F.2d 635, 640 (9th Cir. 1988); see also
21 *McHenry v. Renne*, 84 F.3d 1172 (9th Cir. 1996). It is not the responsibility of the Court
22 to review a rambling narrative in an attempt to determine the number and nature of
23 Plaintiff’s claims.

24 Here, Plaintiff’s allegations fail to comply with Rule 8. As noted, Plaintiff’s 22-
25 page “Narrative” Plaintiff describes numerous events occurring on different dates and
26 involving different Defendants (and numerous other individuals and entities not named as
27 Defendants), and appears to allege different causes of action against different Defendants.
28 In many instances, Plaintiff refers to “they,” “officials,” or “higher-ups” without

1 identifying who these individuals are, or whether he is attempting to assert claims against
2 them. As such, Plaintiff's allegations make it impossible for the Court to determine what
3 exactly Plaintiff's claims are, and at whom they are directed. Put simply, Plaintiff's
4 allegations are neither short nor plain, and it would be impossible for any Defendant to
5 meaningfully respond to the Complaint. Accordingly, the Court will dismiss the
6 Complaint because it fails to comply with Rule 8 of the Federal Rules of Civil Procedure.

7 **V. Leave to Amend**

8 Within 30 days, Plaintiff may submit a first amended complaint to cure the
9 deficiencies outlined above. The Clerk of Court will mail Plaintiff a court-approved form
10 to assist him with filing a first amended complaint. Plaintiff must clearly designate on
11 the face of the document that it is the "First Amended Complaint." The first amended
12 complaint must be retyped or rewritten in its entirety and may not incorporate any part of
13 the original Complaint by reference. Plaintiff may include only one claim per count.

14 A first amended complaint supersedes the original Complaint. *Ferdik v. Bonzelet*,
15 963 F.2d 1258, 1262 (9th Cir. 1992); *Hal Roach Studios v. Richard Feiner & Co.*, 896
16 F.2d 1542, 1546 (9th Cir. 1990). After amendment, the Court will treat the original
17 Complaint as nonexistent. *Ferdik*, 963 F.2d at 1262. Any cause of action that was raised
18 in the original Complaint and that was voluntarily dismissed or was dismissed without
19 prejudice is waived if it is not alleged in a first amended complaint. *Lacey v. Maricopa*
20 *County*, 693 F.3d 896, 928 (9th Cir. 2012) (en banc).

21 Plaintiff should be aware that to state a claim for unconstitutional conditions of
22 confinement, a plaintiff must allege an objectively "sufficiently serious" deprivation that
23 results in the denial of "the minimal civilized measure of life's necessities." *Farmer v.*
24 *Brennan*, 511 U.S. 825, 834 (1994); *Allen v. Sakai*, 48 F.3d 1082, 1087 (9th Cir. 1994);
25 *see Estate of Ford v. Ramirez-Palmer*, 301 F.3d 1043, 1049-50 (9th Cir. 2002). That is, a
26 plaintiff must allege facts supporting that he is incarcerated under conditions posing a
27 substantial risk of harm. *Farmer*, 511 U.S. at 834. "The circumstances, nature, and
28 duration of a deprivation of [] necessities must be considered in determining whether a

1 constitutional violation has occurred.” *Hearns v. Terhune*, 413 F.3d 1036, 1042 (9th Cir.
2 2005) (quoting *Johnson v. Lewis*, 217 F.3d 726, 731 (9th Cir. 2000)). Further, whether a
3 condition of confinement rises to the level of a constitutional violation may depend, in
4 part, on the duration of an inmate’s exposure to that condition. *Keenan v. Hall*, 83 F.3d
5 1083, 1089 (9th Cir. 1996) (citing *Hutto v. Finney*, 437 U.S. 678, 686-87 (1978)). In
6 addition, allegations of overcrowding, alone, are insufficient to state a claim. *See Rhodes*
7 *v. Chapman*, 452 U.S. 337, 348 (1981). When, however, overcrowding causes an
8 increase in violence or reduces the provision of other constitutionally required services,
9 or reaches a level where the institution is no longer fit for human habitation, the inmate’s
10 right against cruel and unusual punishment may be violated. *See Balla v. Idaho State Bd.*
11 *of Corr.*, 869 F.2d 461, 471 (9th Cir. 1989); *Toussaint v. Yockey*, 722 F.2d 1490, 1492
12 (9th Cir. 1984).

13 A plaintiff must also allege facts to support that a defendant acted with deliberate
14 indifference. Deliberate indifference is a higher standard than negligence or lack of
15 ordinary due care for the prisoner’s safety. *Farmer*, 511 U.S. at 835. To state a claim of
16 deliberate indifference, a plaintiff must meet a two-part test. First, the alleged
17 constitutional deprivation must be, objectively, “sufficiently serious”; the official’s act or
18 omission must result in the denial of “the minimal civilized measure of life’s necessities.”
19 *Id.* at 834 (citations omitted). Second, the prison official must have a “sufficiently
20 culpable state of mind,” i.e., he must act with deliberate indifference to inmate health or
21 safety. *Id.* (citations omitted). In defining “deliberate indifference” in this context, the
22 Supreme Court has imposed a subjective test: “the official must both be aware of facts
23 from which the inference could be drawn that a substantial risk of serious harm exists,
24 and he must also draw the inference.” *Id.* at 837 (emphasis added).

25 Similarly, to state a § 1983 medical claim, a plaintiff must show (1) a “serious
26 medical need” by demonstrating that failure to treat the condition could result in further
27 significant injury or the unnecessary and wanton infliction of pain and (2) the defendant’s
28 response was deliberately indifferent. *Jett v. Penner*, 439 F.3d 1091, 1096 (9th Cir.

1 2006).

2 “Deliberate indifference is a high legal standard.” *Toguchi v. Chung*, 391 F.3d
3 1051, 1060 (9th Cir. 2004). To act with deliberate indifference, a prison official must
4 both know of and disregard an excessive risk to inmate health; “the official must both be
5 aware of facts from which the inference could be drawn that a substantial risk of serious
6 harm exists, and he must also draw the inference.” *Farmer*, 511 U.S. at 837. Deliberate
7 indifference in the medical context may be shown by a purposeful act or failure to
8 respond to a prisoner’s pain or possible medical need and harm caused by the
9 indifference. *Jett*, 439 F.3d at 1096. Deliberate indifference may also be shown when a
10 prison official intentionally denies, delays, or interferes with medical treatment or by the
11 way prison doctors respond to the prisoner’s medical needs. *Estelle v. Gamble*, 429 U.S.
12 97, 104-05 (1976); *Jett*, 439 F.3d at 1096.

13 Deliberate indifference is a higher standard than negligence or lack of ordinary
14 due care for the prisoner’s safety. *Farmer*, 511 U.S. at 835. “Neither negligence nor
15 gross negligence will constitute deliberate indifference.” *Clement v. California Dep’t of*
16 *Corr.*, 220 F. Supp. 2d 1098, 1105 (N.D. Cal. 2002); *see also Broughton v. Cutter Labs.*,
17 622 F.2d 458, 460 (9th Cir. 1980) (mere claims of “indifference,” “negligence,” or
18 “medical malpractice” do not support a claim under § 1983). “A difference of opinion
19 does not amount to deliberate indifference to [a plaintiff’s] serious medical needs.”
20 *Sanchez v. Vild*, 891 F.2d 240, 242 (9th Cir. 1989). A mere delay in medical care,
21 without more, is insufficient to state a claim against prison officials for deliberate
22 indifference. *See Shapley v. Nevada Bd. of State Prison Comm’rs*, 766 F.2d 404, 407
23 (9th Cir. 1985). The indifference must be substantial. The action must rise to a level of
24 “unnecessary and wanton infliction of pain.” *Estelle*, 429 U.S. at 105.

25 Plaintiff should also be aware that to state a First Amendment, free-exercise-of-
26 religion claim, a plaintiff must allege that a defendant burdened the practice of plaintiff’s
27 religion by preventing him from engaging in a sincerely held religious belief and that the
28 defendant did so without any justification reasonably related to legitimate penological

1 interests. *Shakur v. Schriro*, 514 F.3d 878 (9th Cir. 2008).

2 Additionally, a viable claim of First Amendment retaliation contains five basic
3 elements: (1) an assertion that a state actor took some adverse action against an inmate
4 (2) because of (3) that prisoner's protected conduct, and that such action (4) chilled the
5 inmate's exercise of his First Amendment rights (or that the inmate suffered more than
6 minimal harm) and (5) did not reasonably advance a legitimate correctional goal. *Rhodes*
7 *v. Robinson*, 408 F.3d 559, 567-68 (9th Cir. 2005); *see also Hines v. Gomez*, 108 F.3d
8 265, 267 (9th Cir. 1997) (retaliation claims require an inmate to show (1) that the prison
9 official acted in retaliation for the exercise of a constitutionally protected right, and
10 (2) that the action "advanced no legitimate penological interest"). The plaintiff has the
11 burden of demonstrating that his exercise of his First Amendment rights was a substantial
12 or motivating factor behind the defendants' conduct. *Mt. Healthy City School Dist. Bd. of*
13 *Educ. v. Doyle*, 429 U.S. 274, 287 (1977); *Soranno's Gasco, Inc. v. Morgan*, 874 F.2d
14 1310, 1314 (9th Cir. 1989).

15 Finally, the right of meaningful access to the courts prohibits officials from
16 actively interfering with inmates' attempts to prepare or file legal documents. *Lewis v.*
17 *Casey*, 518 U.S. 343, 350 (1996). The right of access to the courts is only a right to bring
18 petitions or complaints to federal court and not a right to discover such claims or even to
19 litigate them effectively once filed with a court. *Id.* at 354. The right "guarantees no
20 particular methodology but rather the conferral of a capability—the capability of bringing
21 contemplated challenges to sentences or conditions of confinement before the courts."
22 *Id.* at 356.

23 As a matter of standing, for an access-to-courts claim, a plaintiff must show that
24 he suffered an "actual injury" with respect to contemplated litigation. *Id.* at 349. To
25 show actual injury with respect to contemplated litigation, the plaintiff must demonstrate
26 that the defendants' conduct frustrated or impeded him from bringing to court a
27 nonfrivolous claim that he wished to present. *Id.* at 352-53.

28 "[T]he injury requirement is not satisfied by just any type of frustrated legal

1 claim.” *Id.* at 354. The right of access to the courts “does not guarantee inmates the
2 wherewithal to transform themselves into litigating engines capable of filing everything
3 from shareholder derivative actions to slip-and-fall claims.” *Id.* at 355. The nonfrivolous
4 claim must be a direct or collateral attack on the inmate’s sentence or a challenge to the
5 conditions of his confinement. *Id.* “Impairment of any *other* litigating capacity is simply
6 one of the incidental (and perfectly constitutional) consequences of conviction and
7 incarceration.” *Id.* (emphasis in original).

8 **VI. Warnings**

9 **A. Address Changes**

10 If Plaintiff’s address changes, Plaintiff must file and serve a notice of a change of
11 address in accordance with Rule 83.3(d) of the Local Rules of Civil Procedure. Plaintiff
12 must not include a motion for other relief with a notice of change of address. Failure to
13 comply may result in dismissal of this action.

14 **B. Possible Dismissal**

15 If Plaintiff fails to timely comply with every provision of this Order, including
16 these warnings, the Court may dismiss this action without further notice. *See Ferdik*, 963
17 F.2d at 1260-61 (a district court may dismiss an action for failure to comply with any
18 order of the Court).

19 **IT IS ORDERED:**

20 (1) Plaintiff’s Application to Proceed In Forma Pauperis (Doc. 2) is **granted**.
21 Plaintiff is not required to pay the filing fees for this action.


22 (2) The Complaint (Doc. 1) is **dismissed** for failure to comply with Rule 8 of
23 the Federal Rules of Civil Procedure. Plaintiff has **30 days** from the date this Order is
24 filed to file a first amended complaint in compliance with this Order.

25 (3) If Plaintiff fails to file an amended complaint within 30 days, the Clerk of
26 Court must, without further notice, enter a judgment of dismissal of this action without
27 prejudice, and deny any pending unrelated motions as moot.

28 (4) The Clerk of Court must mail Plaintiff a court-approved form for filing a

1 civil rights complaint by a prisoner.

2 Dated this 25th day of January, 2018.

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7 James A. Teilborg
8 Senior United States District Judge
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**Instructions for a Prisoner Filing a Civil Rights Complaint
in the United States District Court for the District of Arizona**

1. Who May Use This Form. The civil rights complaint form is designed to help incarcerated persons prepare a complaint seeking relief for a violation of their federal civil rights. These complaints typically concern, but are not limited to, conditions of confinement. **This form should not be used to challenge your conviction or sentence.** If you want to challenge a state conviction or sentence, you should file a petition under 28 U.S.C. § 2254 for a writ of habeas corpus by a person in state custody. If you want to challenge a federal conviction or sentence, you should file a motion under 28 U.S.C. § 2255 to vacate sentence in the federal court that entered the judgment.
2. The Form. **Local Rule of Civil Procedure (LRCiv) 3.4(a) provides that complaints by incarcerated persons must be filed on the court-approved form.** The form must be typed or neatly handwritten. The form must be completely filled in to the extent applicable. All questions must be answered clearly and concisely in the appropriate space on the form. If needed, you may attach additional pages, **but no more than fifteen additional pages**, of standard letter-sized paper. You must identify which part of the complaint is being continued and number all pages. If you do not fill out the form properly, you will be asked to submit additional or corrected information, which may delay the processing of your action. You do not need to cite law.
3. Your Signature. You must tell the truth and sign the form. If you make a false statement of a material fact, you may be prosecuted for perjury.
4. The Filing and Administrative Fees. The total fees for this action are \$400.00 (\$350.00 filing fee plus \$50.00 administrative fee). If you are unable to immediately pay the fees, you may request leave to proceed in forma pauperis. Please review the “Information for Prisoners Seeking Leave to Proceed with a (Non-Habeas) Civil Action in Federal Court In Forma Pauperis Pursuant to 28 U.S.C. § 1915” for additional instructions.
5. Original and Judge's Copy. You must send an **original plus one copy** of your complaint and of any other documents submitted to the Court. You must send one additional copy to the Court if you wish to have a file-stamped copy of the document returned to you. All copies must be identical to the original. Copies may be legibly handwritten. **This section does not apply to inmates housed at an Arizona Department of Corrections facility that participates in electronic filing.**
6. Where to File. You should file your complaint in the division **where you were confined when your rights were allegedly violated.** See LRCiv 5.1(a) and 77.1(a). If you were confined in Maricopa, Pinal, Yuma, La Paz, or Gila County, file in the Phoenix Division. If you were confined in Apache, Navajo, Coconino, Mohave, or Yavapai County, file in the Prescott Division. If you were confined in Pima, Cochise, Santa Cruz, Graham, or Greenlee County, file in the Tucson Division. **Mail the original and one copy of the complaint with the \$400 filing and administrative fees or the application to proceed in forma pauperis to:**

Phoenix & Prescott Divisions:
U.S. District Court Clerk
U.S. Courthouse, Suite 130
401 West Washington Street, SPC 10
Phoenix, Arizona 85003-2119

OR

Tucson Division:
U.S. District Court Clerk
U.S. Courthouse, Suite 1500
405 West Congress Street
Tucson, Arizona 85701-5010

7. Change of Address. You must immediately notify the Court and the defendants in writing of any change in your mailing address. **Failure to notify the Court of any change in your mailing address may result in the dismissal of your case.**

8. Certificate of Service. You must furnish the defendants with a copy of any document you submit to the Court (except the initial complaint and application to proceed in forma pauperis). Each original document (except the initial complaint and application to proceed in forma pauperis) must include a certificate of service on the last page of the document stating the date a copy of the document was mailed to the defendants and the address to which it was mailed. *See Fed. R. Civ. P. 5(a), (d).* Any document received by the Court that does not include a certificate of service may be stricken. **This section does not apply to inmates housed at an Arizona Department of Corrections facility that participates in electronic filing.**

A certificate of service should be in the following form:

I hereby certify that a copy of the foregoing document was mailed
this _____ (month, day, year) to:

Name: _____

Address: _____

Attorney for Defendant(s)

(Signature)

9. Amended Complaint. If you need to change any of the information in the initial complaint, you must file an amended complaint. The amended complaint must be written on the court-approved civil rights complaint form. You may file one amended complaint without leave (permission) of Court within 21 days after serving it or within 21 days after any defendant has filed an answer, whichever is earlier. *See Fed. R. Civ. P. 15(a).* Thereafter, you must file a motion for leave to amend and lodge (submit) a proposed amended complaint. LRCiv 15.1. In addition, an amended complaint may not incorporate by reference any part of your prior complaint. LRCiv 15.1(a)(2). **Any allegations or defendants not included in the amended complaint are considered dismissed.** All amended complaints are subject to screening under the Prison Litigation Reform Act; screening your amendment will take additional processing time.

10. Exhibits. You should not submit exhibits with the complaint or amended complaint. Instead, the relevant information should be paraphrased. You should keep the exhibits to use to support or oppose a motion to dismiss, a motion for summary judgment, or at trial.

11. Letters and Motions. It is generally inappropriate to write a letter to any judge or the staff of any judge. The only appropriate way to communicate with the Court is by filing a written pleading or motion.

12. Completing the Civil Rights Complaint Form.

HEADING:

1. Your Name. Print your name, prison or inmate number, and institutional mailing address on the lines provided.
2. Defendants. If there are **four or fewer** defendants, print the name of each. If you name **more than four** defendants, print the name of the first defendant on the first line, write the words “and others” on the second line, and attach an additional page listing the names of **all** of the defendants. Insert the additional page after page 1 and number it “1-A” at the bottom.
3. Jury Demand. If you want a jury trial, you must write “JURY TRIAL DEMANDED” in the space below “CIVIL RIGHTS COMPLAINT BY A PRISONER.” Failure to do so may result in the loss of the right to a jury trial. A jury trial is not available if you are seeking only injunctive relief.

Part A. JURISDICTION:

1. Nature of Suit. Mark whether you are filing the complaint pursuant to 42 U.S.C. § 1983 for state, county, or city defendants; “*Bivens v. Six Unknown Federal Narcotics Agents*” for federal defendants; or “other.” If you mark “other,” identify the source of that authority.
2. Location. Identify the institution and city where the alleged violation of your rights occurred.
3. Defendants. Print all of the requested information about each of the defendants in the spaces provided. If you are naming more than four defendants, you must provide the necessary information about each additional defendant on separate pages labeled “2-A,” “2-B,” etc., at the bottom. Insert the additional page(s) immediately behind page 2.

Part B. PREVIOUS LAWSUITS:

You must identify any other lawsuit you have filed in either state or federal court while you were a prisoner. Print all of the requested information about each lawsuit in the spaces provided. If you have filed more than three lawsuits, you must provide the necessary information about each additional lawsuit on a separate page. Label the page(s) as “2-A,” “2-B,” etc., at the bottom of the page and insert the additional page(s) immediately behind page 2.

Part C. CAUSE OF ACTION:

You must identify what rights each defendant violated. The form provides space to allege three separate counts (**one violation per count**). If you are alleging more than three counts, you must provide the necessary information about each additional count on a separate page. Number the additional pages “5-A,” “5-B,” etc., and insert them immediately behind page 5. Remember that you are limited to a total of fifteen additional pages.

1. Counts. You must identify which civil right was violated. **You may allege the violation of only one civil right per count.**

2. Issue Involved. Check the box that most closely identifies the issue involved in your claim. **You may check only one box per count.** If you check the box marked “Other,” you must identify the specific issue involved.

3. Supporting Facts. After you have identified which civil right was violated, you must state the supporting facts. Be as specific as possible. You must state what each individual defendant did to violate your rights. If there is more than one defendant, you must identify which defendant did what act. You also should state the date(s) on which the act(s) occurred, if possible.

4. Injury. State precisely how you were injured by the alleged violation of your rights.

5. Administrative Remedies. You must exhaust any available administrative remedies before you file a civil rights complaint. *See* 42 U.S.C. § 1997e. Consequently, you should disclose whether you have exhausted the inmate grievance procedures or administrative appeals for each count in your complaint. If the grievance procedures were not available for any of your counts, fully explain why on the lines provided.

Part D. REQUEST FOR RELIEF:

Print the relief you are seeking in the space provided.

SIGNATURE:

You must sign your name and print the date you signed the complaint. Failure to sign the complaint will delay the processing of your action. Unless you are an attorney, you may not bring an action on behalf of anyone but yourself.

FINAL NOTE

You should follow these instructions carefully. Failure to do so may result in your complaint being stricken or dismissed. All questions must be answered concisely in the proper space on the form. If you need more space, you may attach no more than fifteen additional pages. But the form must be completely filled in to the extent applicable. If you attach additional pages, be sure to identify which section of the complaint is being continued and number the pages.

Name and Prisoner/Booking Number

Place of Confinement

Mailing Address

City, State, Zip Code

(Failure to notify the Court of your change of address may result in dismissal of this action.)

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

_____,
(Full Name of Plaintiff)

Plaintiff,

v.

(1) _____,
(Full Name of Defendant)

(2) _____,

(3) _____,

(4) _____,

Defendant(s).

☐ Check if there are additional Defendants and attach page 1-A listing them.

CASE NO. _____
(To be supplied by the Clerk)

**CIVIL RIGHTS COMPLAINT
BY A PRISONER**

- ☐ Original Complaint
☐ First Amended Complaint
☐ Second Amended Complaint

A. JURISDICTION

1. This Court has jurisdiction over this action pursuant to:

☐ 28 U.S.C. § 1343(a); 42 U.S.C. § 1983

☐ 28 U.S.C. § 1331; *Bivens v. Six Unknown Federal Narcotics Agents*, 403 U.S. 388 (1971).

☐ Other: _____.

2. Institution/city where violation occurred: _____.

B. DEFENDANTS

1. Name of first Defendant: _____. The first Defendant is employed as: _____ at _____.
(Position and Title) (Institution)
2. Name of second Defendant: _____. The second Defendant is employed as: _____ at _____.
(Position and Title) (Institution)
3. Name of third Defendant: _____. The third Defendant is employed as: _____ at _____.
(Position and Title) (Institution)
4. Name of fourth Defendant: _____. The fourth Defendant is employed as: _____ at _____.
(Position and Title) (Institution)

If you name more than four Defendants, answer the questions listed above for each additional Defendant on a separate page.

C. PREVIOUS LAWSUITS

1. Have you filed any other lawsuits while you were a prisoner? ☐ Yes ☐ No
2. If yes, how many lawsuits have you filed? _____. Describe the previous lawsuits:
 - a. First prior lawsuit:
 1. Parties: _____ v. _____
 2. Court and case number: _____
 3. Result: (Was the case dismissed? Was it appealed? Is it still pending?) _____
 - b. Second prior lawsuit:
 1. Parties: _____ v. _____
 2. Court and case number: _____
 3. Result: (Was the case dismissed? Was it appealed? Is it still pending?) _____
 - c. Third prior lawsuit:
 1. Parties: _____ v. _____
 2. Court and case number: _____
 3. Result: (Was the case dismissed? Was it appealed? Is it still pending?) _____

If you filed more than three lawsuits, answer the questions listed above for each additional lawsuit on a separate page.

D. CAUSE OF ACTION

COUNT I

1. State the constitutional or other federal civil right that was violated: _____.
 2. **Count I.** Identify the issue involved. Check **only one**. State additional issues in separate counts.

<input type="checkbox"/> Basic necessities	<input type="checkbox"/> Mail	<input type="checkbox"/> Access to the court	<input type="checkbox"/> Medical care
<input type="checkbox"/> Disciplinary proceedings	<input type="checkbox"/> Property	<input type="checkbox"/> Exercise of religion	<input type="checkbox"/> Retaliation
<input type="checkbox"/> Excessive force by an officer	<input type="checkbox"/> Threat to safety	<input type="checkbox"/> Other: _____.	
 3. **Supporting Facts.** State as briefly as possible the FACTS supporting Count I. Describe exactly what each Defendant did or did not do that violated your rights. State the facts clearly in your own words without citing legal authority or arguments.

 4. **Injury.** State how you were injured by the actions or inactions of the Defendant(s).

 5. **Administrative Remedies:**

 - Are there any administrative remedies (grievance procedures or administrative appeals) available at your institution? ☐ Yes ☐ No
 - Did you submit a request for administrative relief on Count I? ☐ Yes ☐ No
 - Did you appeal your request for relief on Count I to the highest level? ☐ Yes ☐ No
 - If you did not submit or appeal a request for administrative relief at any level, briefly explain why you did not. _____

COUNT II

1. State the constitutional or other federal civil right that was violated: _____.

 2. **Count II.** Identify the issue involved. Check **only one**. State additional issues in separate counts.

<input type="checkbox"/> Basic necessities	<input type="checkbox"/> Mail	<input type="checkbox"/> Access to the court	<input type="checkbox"/> Medical care
<input type="checkbox"/> Disciplinary proceedings	<input type="checkbox"/> Property	<input type="checkbox"/> Exercise of religion	<input type="checkbox"/> Retaliation
<input type="checkbox"/> Excessive force by an officer	<input type="checkbox"/> Threat to safety	<input type="checkbox"/> Other: _____.	

 3. **Supporting Facts.** State as briefly as possible the FACTS supporting Count II. Describe exactly what **each Defendant** did or did not do that violated your rights. State the facts clearly in your own words without citing legal authority or arguments.

 4. **Injury.** State how you were injured by the actions or inactions of the Defendant(s).

 5. **Administrative Remedies.**
 - a. Are there any administrative remedies (grievance procedures or administrative appeals) available at your institution? ☐ Yes ☐ No
 - b. Did you submit a request for administrative relief on Count II? ☐ Yes ☐ No
 - c. Did you appeal your request for relief on Count II to the highest level? ☐ Yes ☐ No
 - d. If you did not submit or appeal a request for administrative relief at any level, briefly explain why you did not. _____.

COUNT III

1. State the constitutional or other federal civil right that was violated: _____

2. **Count III.** Identify the issue involved. Check **only one**. State additional issues in separate counts.
- | | | | |
|--|---|---|---------------------------------------|
| <input type="checkbox"/> Basic necessities | <input type="checkbox"/> Mail | <input type="checkbox"/> Access to the court | <input type="checkbox"/> Medical care |
| <input type="checkbox"/> Disciplinary proceedings | <input type="checkbox"/> Property | <input type="checkbox"/> Exercise of religion | <input type="checkbox"/> Retaliation |
| <input type="checkbox"/> Excessive force by an officer | <input type="checkbox"/> Threat to safety | <input type="checkbox"/> Other: _____ | |

3. **Supporting Facts.** State as briefly as possible the FACTS supporting Count III. Describe exactly what **each Defendant** did or did not do that violated your rights. State the facts clearly in your own words without citing legal authority or arguments.

4. **Injury.** State how you were injured by the actions or inactions of the Defendant(s).

- ## 5. Administrative Remedies.

- a. Are there any administrative remedies (grievance procedures or administrative appeals) available at your institution? ☐ Yes ☐ No
- b. Did you submit a request for administrative relief on Count III? ☐ Yes ☐ No
- c. Did you appeal your request for relief on Count III to the highest level? ☐ Yes ☐ No
- d. If you did not submit or appeal a request for administrative relief at any level, briefly explain why you did not. _____

If you assert more than three Counts, answer the questions listed above for each additional Count on a separate page.

E. REQUEST FOR RELIEF

State the relief you are seeking:

I declare under penalty of perjury that the foregoing is true and correct.

Executed on _____
DATE

SIGNATURE OF PLAINTIFF

(Name and title of paralegal, legal assistant, or
other person who helped prepare this complaint)

(Signature of attorney, if any)

(Attorney's address & telephone number)

ADDITIONAL PAGES

All questions must be answered concisely in the proper space on the form. If you need more space, you may attach no more than fifteen additional pages. But the form must be completely filled in to the extent applicable. If you attach additional pages, be sure to identify which section of the complaint is being continued and number all pages.